

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's	)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for	)	
Mobile and Fixed Services to Support the	)	
Introduction of New Advanced Wireless	)	
Services, including Third Generation Wireless	)	
Systems	)	
To:		The Commission

**REPLY COMMENTS OF  
BELLSOUTH CORPORATION, BELLSOUTH WIRELESS CABLE, INC. AND  
SOUTH FLORIDA TELEVISION, INC.**

BellSouth Corporation and its wholly-owned subsidiaries BellSouth Wireless Cable, Inc. and South Florida Television, Inc. (collectively, "BellSouth") hereby submit Reply Comments in response to certain of the Comments filed in the above-captioned proceeding.<sup>1</sup> In addition to supporting proposals advanced by some Commenters, BellSouth opposes those proposals that would, if adopted, place incumbent BRS-1/2 licensees under significant hardship by unfairly favoring the prospective interests of Advanced Wireless Service ("AWS") new entrants. As discussed in its Comments,<sup>2</sup> in adopting BRS relocation rules, the Commission should be ever-mindful of its twin guideposts in this proceeding – minimizing disruption to BRS operations<sup>3</sup> and ensuring

---

<sup>1</sup> In the Matter of Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, *Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order*, 20 FCC Rcd 15866 (2005) ("FNPRM"). A summary was published in the Federal Register on October 26, 2005. See 70 Fed. Reg. 61752 (2005).

<sup>2</sup> See Comments of BellSouth Corporation, BellSouth Wireless Cable, Inc. and South Florida Television, Inc., ET Docket No. 00-258, filed Nov. 23, 2005 ("BellSouth Comments").

<sup>3</sup> See FNPRM at ¶12.

that all incumbents that relocate to “comparable facilities” are reimbursed.<sup>4</sup> By following these objectives, the Commission will “take account of the unique circumstances faced by the various incumbent operations” and better balance BRS and AWS competing interests.<sup>5</sup>

### **Discussion**

#### **I. THE COMMISSION SHOULD REQUIRE RELOCATION TO “COMPARABLE FACILITIES” WHENEVER AWS OPERATIONS WOULD HAVE LINE OF SIGHT TO PROTECTED BRS FACILITIES.**

##### **A. In Determining Whether BRS Incumbents Must be Relocated, The Commission Should Reject Proposals to Establish “Relocation Zones” and Require Relocation if the Proposed AWS Operations Would Have Line of Sight to the BRS Geographic Service Area.**

As the operator of video facilities on Channel BRS-1 in five markets,<sup>6</sup> BellSouth is concerned that proposals to establish “relocation zones” will not adequately address interference that BellSouth’s operations predictably would suffer. In particular, Sprint’s approach would require relocation of video facilities only “where AWS mobile receivers may experience harmful interference [because] AWS mobile receivers are vulnerable to high-power transmissions” from BRS video transmitters.<sup>7</sup> CTIA and Sprint also propose to establish relocation zones in areas where a proposed AWS deployment, whether fixed or mobile, would have line of sight to a BRS hub station.<sup>8</sup>

---

<sup>4</sup> *Id.* at ¶25.

<sup>5</sup> *Id.* at ¶13.

<sup>6</sup> See BellSouth Comments at 2.

<sup>7</sup> Comments of Sprint Nextel Corporation, ET Docket No. 00-258, filed Nov. 25, 2005 (“Sprint Comments”) at 33. The relocation zones envisaged by this proposal would be determined according to the height above ground of the AWS mobile receiver.

<sup>8</sup> See Comments of CTIA – The Wireless Association, ET Docket No. 00-258, filed Nov. 25, 2005 (“CTIA Comments”) at 5. See also Sprint Comments at 27. These proposals specifically address first-generation broadband systems, but could be construed more broadly. Suffice it to say, under any scenario, the obligation to relocate a BRS incumbent should turn not on a contrived “relocation zone” concept based on predicted interference to the AWS receiver, but on line of sight within the BRS licensee’s GSA.

The problem with these approaches is that they look only at predicted interference to the AWS receiver and not at all to BRS subscriber locations. These proposals are inherently unfair to both BRS operators and their subscribers, whose rights would be totally ignored. A more balanced and legally sound means to determine whether BRS video facilities must be relocated is the proposal advanced by WCA, which would require mandatory negotiations “whenever the AWS licensee proposes to deploy a base station that has a line of sight to the BRS station’s GSA.”<sup>9</sup> This approach properly recognizes that relocation is predicated on interference to the incumbent’s facilities, and not interference that a newcomer might be predicted to suffer. It also correctly acknowledges that BRS licensees are entitled to interference protection at all locations inside their GSAs, not just at points where those operations would result in interference to newcomers’ operations. Moreover, WCA’s approach is far easier to apply than an analysis that requires market-by-market evaluation, where even Sprint concedes that “the precise size of the relocation zone will vary depending on the height above ground of any given AWS mobile unit.”<sup>10</sup> The Commission should reject Sprint’s approach and adopt WCA’s proposal, which fairly balances the interests of incumbents entitled to interference protection throughout the entire GSA.

---

<sup>9</sup> Comments on Fifth Notice of Proposed Rulemaking of the Wireless Communications Association International, Inc., ET Docket No. 00-258, filed Nov. 25, 2005 (“WCA Comments”) at 36. BellSouth also agrees with WCA’s proposed methodology for determining line of sight, which is based on certain assumptions used to measure line of sight for many years. *See id.* at 36-37.

<sup>10</sup> Sprint Comments at 33.

**B. BRS Licensees Must Control the Relocation of Their Facilities.**

BellSouth agrees with WCA and Sprint that, consistent with recent precedent involving relocation of incumbent operators,<sup>11</sup> BRS licensees must control selecting and deploying comparable facilities.<sup>12</sup> The relocation of facilities will, in BellSouth's case, involve relocating subscribers by changing out the customer premise equipment located at residences and businesses. Because BellSouth has an important relationship with each customer, it cannot relinquish control to an AWS new entrant that may not invest the appropriate amount of time and effort to ensure that the equipment change-out proceeds smoothly. BellSouth has professional installers and technicians that are, in many cases the "face" of the company.<sup>13</sup> The customer's satisfaction should not, by regulatory fiat, be handed over to an unrelated third party.

Moreover, BellSouth must be assured that third parties performing the physical relocation do not have access to proprietary information such as the identity of customers and information about them. In the *800 MHz Order*, the Commission expressed similar concerns, and thus allowed incumbents to control relocation.<sup>14</sup> Anything less here would not just be contrary to this sound precedent, but would also contravene the Commission's stated desire to "minimize the disruption to incumbent BRS . . . operations."<sup>15</sup>

---

<sup>11</sup> See, e.g., Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order and Fourth Memorandum Opinion Order, and Order*, 19 FCC Rcd 14969 (2004) ("800 MHz Order") at 15078.

<sup>12</sup> See Sprint Comments at 25; WCA Comments at 11-14.

<sup>13</sup> See Sprint Comments at 25.

<sup>14</sup> See *800 MHz Order* at 15078. See also WCA Comments at 14.

<sup>15</sup> *FNPRM* at ¶12.

## **II. THE COMMISSION SHOULD ENSURE THAT ALL BRS INCUMBENTS ARE REIMBURSED IN A TIMELY FASHION.**

BellSouth<sup>16</sup> and others<sup>17</sup> asked the Commission to reject its proposal to impose a sunset date after which AWS Block F licensees would no longer be required to fund BRS relocations, and instead urged the Commission to require reimbursement within ten years following grant of the AWS license. Imposing a sunset date would be diametrically opposed to the Commission's own acknowledgment that AWS auction winners "must guarantee payment of all [BRS] relocation expenses."<sup>18</sup> Without a clearly-mandated funding requirement, BRS incumbents that clear the band – for the benefit of AWS new entrants – might never receive compensation if the AWS Block F licensee does not construct before the sunset date, and BRS incumbents that have not relocated would be relegated to secondary status and be subject to harmful interference without recourse. In addition, there is no basis in the record for skewing the balance in favor of AWS new entrants in this manner and for adopting a policy that rewards them for constructing after the sunset. Moreover, in the words of WCA, "[t]he fundamental unfairness of this approach is exacerbated by the competitive relationship between BRS and AWS."<sup>19</sup>

Although the record shows no support for the Commission's proposal to impose a ten-year sunset on reimbursement, CTIA asks the Commission to adopt a 15-year reimbursement deadline, which would coincide with the end of the initial AWS license term and the deadline for demonstrating "substantial service."<sup>20</sup> According to CTIA,

---

<sup>16</sup> See BellSouth Comments at 9-10.

<sup>17</sup> See WCA Comments at 28-32; Comments of C&W Enterprises, Inc., ET Docket No. 00-258, filed Nov. 25, 2005 ("C&W Comments") at 6; Comments of SpeedNet, L.L.C., ET Docket No. 00-258, filed Nov. 25, 2005 ("SpeedNet Comments") at 6.

<sup>18</sup> *FNPRM* at ¶25.

<sup>19</sup> WCA Comments at 30.

<sup>20</sup> See CTIA Comments at 12.

“such a sunset date ensures that the transition will be completed by a date certain.”<sup>21</sup>

Sprint also argues in favor of a 15-year sunset date, but observes that “[a]llowing the BRS relocation obligation to expire five years before the AWS licensee must construct facilities in the band creates a perverse incentive for the AWS licensee to delay broadband deployment in order to avoid having to pay to relocate the incumbent BRS licensees.”<sup>22</sup>

These proposals do not go far enough to eliminate the potential for BRS licensees and their subscribers to be short-changed. As BellSouth and WCA both explained, AWS licensees will have 15-year license terms and “substantial service” obligations that require coverage to only 20 percent of the extremely large Regional Economic Area Grouping license area. Thus, in many parts of the country, AWS licensees are not likely to construct facilities, even within the 15-year initial license term. Yet, those BRS incumbents that clear the band prior to that date would receive no funding support for doing so – a disincentive to band-clearing that places BRS incumbents at risk of having to fund their own relocations. This result would plainly be at odds with the Commission’s requirement to “guarantee payment of all [BRS] relocation expenses.”<sup>23</sup>

The Commission also should reject CTIA’s proposal to cap reimbursement at 110 percent of the BRS licensee’s estimated relocation costs as a means to control certainty.<sup>24</sup> BellSouth believes that this concern can be addressed by adopting the same rules that the Commission imposed in the 800 MHz rebanding proceeding. As discussed by WCA, the Commission in that proceeding limited expenses to those necessary to deploy and

---

<sup>21</sup> *Id.*

<sup>22</sup> Sprint Comments at 44-45.

<sup>23</sup> *FNPRM* at ¶25.

<sup>24</sup> See CTIA Comments at 10. See also Comments of T-Mobile USA, Inc., ET Docket No. 00-258, filed Nov. 25, 2005, at 3.

relocate to “comparable facilities” and required the incumbent to negotiate in good faith.<sup>25</sup> With these requirements in place, there is no need to impose a cap on relocation expenses. Moreover, because the BRS incumbent would have relocation funds in hand,, relocation is likely to take place more expeditiously to facilitate “early entry” of AWS.<sup>26</sup>

### **III. THE COMMISSION SHOULD ADOPT OTHER PROPOSALS THAT PROPERLY BALANCE THE INTERESTS OF BRS INCUMBENTS AND AWS NEW ENTRANTS.**

The record in this proceeding demonstrates broad support for a number of proposals that the Commission should adopt. *First*, as discussed at length by Sprint, the Commission should require relocation on a system-by-system basis rather than a link-by-link basis in light of the fact that BRS licenses are, as is the case with BellSouth’s BRS-1 licenses, part of a system that includes other BRS and EBS stations and provide wide-area coverage.<sup>27</sup> *Second*, the Commission should adopt WCA’s proposal, supported by the record in IB Docket No. 02-364, that would require AWS auction winners to fund the repacking of Broadcast Auxiliary Service Channel A10 to digital operations in the 2450-2486 MHz band so BRS-1 licensees that are relocated to 2496-2500/02 MHz do not bear that responsibility.<sup>28</sup>

---

<sup>25</sup> See WCA Comments at 21, *citing 800 MHz Order*, at 15074. BellSouth asked the Commission to require reimbursement within three years for any BRS incumbent that self-relocates. See BellSouth Comments at 9. WCA suggested that the Commission require AWS licensees to pay estimated relocation costs to the BRS incumbent prior to relocation, with a “true-up” of reimbursable expenses after relocation, consistent with the procedures adopted in the 800 MHz rebanding proceeding. See WCA Comments at 21-24. BellSouth believes that BRS incumbents that self-relocate should be compensated at the earliest possible time as an incentive to clear the 2150-2160/62 MHz band expeditiously.

<sup>26</sup> *FNPRM* at ¶12.

<sup>27</sup> See Sprint Comments at 11-13, 26. See also WCA Comments at 10, 33-35; CTIA Comments at 4-5; Comments of Verizon Wireless, ET Docket No. 00-258, filed Nov. 23, 2005, at 4-5.

<sup>28</sup> See WCA Comments at 49-50. See also Petition for Reconsideration of the Wireless Communications Association International, Inc., IB Docket No. 02-364, filed Sept. 8, 2004, at 19; Petition for Reconsideration of the Society of Broadcast Engineers, IB Docket No. 02-364, filed Sept. 8, 2004, at 4-5.

### **Conclusion**

In light of the foregoing, BellSouth respectfully requests that the Commission adopt the rule changes proposed and discussed above and in the BellSouth Comments.

Respectfully submitted,

**BELLSOUTH CORPORATION,  
BELLSOUTH WIRELESS CABLE, INC. AND  
SOUTH FLORIDA TELEVISION, INC.**

December 12, 2005

By: /s/ Stephen E. Coran  
Stephen E. Coran  
Rini Coran, PC  
1615 L Street, N.W., Suite 1325  
Washington, D.C. 20036  
(202) 463-4310

James G. Harralson  
Charles P. Featherstun  
BellSouth Corporation  
1155 Peachtree Street, N.E., Suite 1800  
Atlanta, Georgia 30309-3610  
(404) 249-3855

Their Attorneys



**Certificate of Service**

I, Kenneth Wolin, of the law firm of Rini Coran, PC, do hereby certify that on this 12th day of December, 2005, I caused copies of the foregoing Reply Comments of BellSouth Corporation, BellSouth Wireless Cable, Inc. and South Florida Television, Inc. to be delivered by first class mail to:

Billy J. Parrott  
Private Networks, Inc.  
276 Fifth Avenue, Suite 301  
New York, NY 10001-0001

C&W Enterprises, Inc.  
John W. Jones, Jr.  
P.O. Box 5248  
San Angelo, TX 76902

CTIA – The Wireless Association  
Christopher Guttman-McCabe  
1400 16th Street, NW, Suite 600  
Washington, DC 20036

Comsearch  
H. Mark Gibson  
19700 Janelia Farm Road  
Ashburn, VA 20147

PCIA, The Wireless Infrastructure Association  
Michael T. N. Fitch, President & CEO  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314

SpeedNet, L.L.C.  
John Ogren, President  
843 Stag Ridge Road  
Rochester Hills, MI 48309

Sprint Nextel Corporation  
Trey Hanbury, Director  
2001 Edmund Halley Drive  
Reston, VA 20191

TerreStar Networks, Inc.  
Jennifer A. Manner Vice President, Regulatory Affairs  
10802 Parkridge Road  
Reston, VA 20190-4334

Gregory C. Staple  
Vinson & Elkins L.L.P.  
1455 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Counsel for TMI Communications and Company  
Limited Partnership

T-Mobile USA, Inc.  
Kathleen O'Brien Ham  
Managing Director, Federal Regulatory Affairs  
401 9th Street, NW, Suite 550  
Washington, DC 20004

Verizon Wireless  
John T. Scott, III, Vice President and Deputy  
General Counsel – Regulatory Law  
1300 I Street, N.W., Suite 400W  
Washington, DC 20005

The Wireless Communications Association International, Inc.  
Andrew Kreig, President  
1333 H Street, NW, Suite 700 West  
Washington, DC 20005

/s/ Kenneth Wolin  
Kenneth Wolin